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SUBJECT: NEW INDIAN EXPORT CONTROL LAW IN THE MAKING

Classified By: Charge Robert O. Blake, Jr., for Reasons 1.4 (B, D)

11. (SBU) Summary: A front page article in the April 26 "Indian Express" reported details of an ambitious draft export control bill giving the GOI far-reaching authority to investigate and enforce stricter controls on WMD-related items and technologies. Entitled "The Weapons of Mass Destruction and their Delivery Systems (Prevention of Unlawful Activities) Bill, 2005," the draft legislation proposes to regulate all manner of trade and transfer of sensitive dual-use goods and technology which is lacking in the current Foreign Trade and Development Regulation Act. Fundamental questions arise regarding who will implement the legislation and whether adequate resources will be allocated for enforcement. GOI contacts have offered to brief the USG on the contents of the proposed law, but have not committed to provide us with a copy before it goes to Parliament.

12. (C) Indicating broad GOI support, MEA Joint Secretary (Americas) S. Jaishankar was optimistic that Parliament would pass the law quickly, but previewed the possibility that the current fractious atmosphere among MPs may delay consideration until the next session (August-September). Former BJP FM Sinha and members of the Indo-US Parliamentary Forum told Charge the law should not encounter significant opposition. If the article is generally accurate and the text is not diluted during the comment process, its passage will be a major milestone toward greater cooperation on all aspects of our strategic relationship. End Summary.

Outline of Pending Export Control Legislation

13. (U) Authored by Shishir Gupta, a journalist with very good access within the MEA, the article outlines the jurisdiction, application, and enforcement of the proposed legislation. The bill seeks to limit any transfer of WMDs or their delivery systems by trade, transfer, re-transfer, transit, and trans-shipment of materials, equipment or technology to any state or non-state entities. The law would apply to any mode of transport in India, its Exclusive Economic Zone (360 km from its coast), or registered in India but located elsewhere. Indian citizens anywhere in the world, foreigners in India, and "persons in Indian service, within and beyond the country" as well as "all associates, branches or subsidiaries outside India of companies registered in India" would be subject to the law. Finally, Gupta lists penalties for violations ranging from a minimum fine of five lakh rupees (approx. \$11,000) to life imprisonment. (Full text of article in para 12.)

14. (U) Preceding this report, the Indian Business Standard on April 19 briefly outlined some procedural aspects of the pending law. According to that article, introduction of the new bill has been delayed so that Commerce and Industry Minister Nath can discuss its provisions with the recently constituted Board of Trade. The article also states that a decision would soon be made on which ministry -- either MEA or the Ministry of Home Affairs -- would "pilot" the legislation.

GOI Seeking Comments?

15. (SBU) The article states that comments are currently being sought from relevant GOI agencies, including DRDO, before the draft bill goes to Parliament. Embassy's contacts at DRDO, ISRO, and the Ministry of Commerce, however, told us that they had not yet seen a copy of the proposed law.

16. (SBU) In view of keen USG interest in the legislation, Jaishankar told Charge in an April 27 meeting that he would suggest to MEA Additional Secretary for International Security, Meera Shankar, that she brief Mission on bill, but did not guarantee that we would see a copy before it goes to Parliament. (Note: Although the GOI has sought public comment on a few recent pieces of pending legislation that have broad economic impact, such as the Food Safety and Standards Bill and the Patent Amendment Bill, it still maintains a close hold on most pending legislation until passed by the Lok Sabha. End Note.)

Initial Questions

17. (SBU) Our reading of the article raises several initial questions, which we will pose if/when we receive the briefing we have requested:

-- The article states, "The government may set up a regulatory authority to implement rules and regulations under this Act." Would the GOI create a new entity to implement this law or would a current body (e.g., the Inter-Ministerial Working Group that currently reviews export licenses) be given new authority?

-- Will the proposed law include "catch-all" provisions and end-use monitoring? (Note: UK PolOff recounted to PolMilOff recent discussions by a Missile Technology Control Regime (MTCR) delegation with MEA Additional Secretary (International Security) Meera Shankar. Shankar asserted that India's current export control law is sufficient to regulate most sensitive dual-use items. When pressed by the MTCR delegation, however, she acknowledged that the GOI may not consistently scrutinize the end-use of a controlled item, according to UK PolOff. Embassy is unaware of any case where the GOI has denied a dual-use license application, nor of any GOI end-use checks. End Note.)

-- Would the law include product lists? (Note: Currently there is confusion among officials as to what items are considered "dual-use" and should require controls. End Note.)

-- Would India begin end-use verifications checks? Would pre-license checks of end-users also be required? (Note: The current law allows for end-use checks, but to Embassy knowledge, these checks are not carried out. Currently, Indian end-use "verification" merely requires that both the supplier and user submit a certificate to the Director General for Foreign Trade stating that the item has been transferred and received. End Note.)

-- Will adequate resources be allocated for effective implementation and enforcement?

Broad Support

18. (SBU) MEA contacts were hopeful that the legislation would be introduced in the current session of Parliament, but MEA Director Venu Rajamony noted in an April 26 meeting with PolCouns that this bill may not get through Parliament's agenda in the current session because of ongoing battles about domestic issues. The April 19 "Business Standard" article cited unnamed officials who speculated that the bill would not be tabled in the current budget session of Parliament. Despite discord among legislators on other issues, Jaishankar was optimistic that the legislation would pass quickly when it is introduced. "Even the Left has figured out that it is to India's advantage to have a good reputation on export controls," Jaishankar told Charge on April 27.

19. (C) So far, we have seen no evidence of Parliamentary resistance to this new legislation. Rather, the main objections that MEA is facing appear to come from within elements of the Indian scientific establishment that are skeptical of US motives. In an April 26 meeting with the Charge, BJP spokesman and former Foreign Minister Yashwant Sinha emphasized that the BJP had no major differences with the Congress on foreign policy, especially as regards relations with the US. Indeed, he argued that the main constraint on Congress foreign policy options was its reliance on the Left parties, many of which remain stuck "in a Cold War mindset." He cited an ongoing debate over pension reform to argue that the Congress is unwilling to advance legislation with BJP support if that means parting ways with the Left. Referring to the NSSP, Sinha said he was happy that US-India initiatives launched by the BJP are now bearing fruit, and welcomed the Administration's intention to develop a broader framework for cooperation, as outlined in the Department's March 25 South Asia Initiative. Pressed by PolCouns regarding the importance of speedy passage of an export control bill, Sinha stated that "we'll be supportive, there should be no issue with the BJP." Regarding the US, Sinha said the BJP's concerns for now focus on the Pakistan F-16's package, to include questions about how many aircraft and what configuration would be offered.

IUPF Support

10. (SBU) We received similar signals of support during an April 27 Charge-led briefing for members of the Indo-US Parliamentary Forum. The Charge walked through the March 25 initiatives and the results of Natwar Singh's follow-on meeting with the Secretary, emphasizing the Administration's intention to take our bilateral relationship to an entirely new level. The Charge and other Country Team members placed considerable importance on the export control bill, noting that progress on such legislation would allow the US to move

forward more quickly on issues of importance to India such as defense technology transfer, civil nuclear cooperation, and satellite collaboration. MPs from several different parties, including Congress, the Congress-allied NCP, the BJP and the NDA-affiliated Biju Janata Dal welcomed the prospect of deeper US-India partnership in these areas and indicated that necessary export control legislation should move ahead quickly. Among this self-selecting, pro-US group (several of whom were educated in America) there was none of the defensiveness about India's existing export control regime that we occasionally see among GOI officials.

Comment

11. (C) Comment: If the article is generally accurate and the text is not diluted during the comment process, its passage will be a major milestone toward greater cooperation on all aspects of our strategic relationship. End Comment.

Text of Article

12. (U) Begin text of April 26 "Indian Express" article:

Government Ready with Law against Smuggling WMDs, N-Material, by Shishir Gupta

Bill: Strict checks, life penalty for offenders as India assures world of commitment to non-proliferation

Seven years after India conducted the Shakti series of nuclear tests at Pokhran, the UPA government is bringing in legislation that steel-clads the non-proliferation framework and imposes punishment, up to life imprisonment, on those found involved in proliferating weapons of mass destruction and missile delivery systems to terrorists, non-state players and other countries.

Authoritative sources indicated that the legislation called 'The Weapons of Mass Destruction and Their Delivery Systems (Prevention of Unlawful Activities) Bill, 2005' has been drafted and comments are being sought from the DRDO and other agencies to make it foolproof.

Though Parliament goes into summer recess from May 13 * it was on this day in 1998 when India conducted the last two of the five detonations at Pokhran * efforts are being made to get the legislation introduced and cleared this session itself.

The legislation has acquired urgency as private players will soon come into the civilian nuclear energy sector and there's greater emphasis on private involvement in the defense sector.

This export control legislation will also help India convince the international community that its non-proliferation record is impeccable and provide impetus to countries such as US and Russia towards sharing of nuclear technology with New Delhi.

The bill provides for cast-iron commitments by India, as a nuclear weapons or other nuclear explosive devices and not to assist or encourage any other state to manufacture or acquire WMDs (sic).

With the broader objective of global disarmament, the bill says that India is committed to prevent terrorists and non-state players from acquiring nuclear devices, chemical or biological weapons and their delivery systems.

If cleared, this legislation will be in addition to the existing non-proliferation rules already in force. This law will apply to the entire country, including its Exclusive Economic Zone which is 360 km (200 nautical miles) from the coast, and to all Indian citizens wherever they are residing.

The bill will apply to any ship, aircraft or any other medium of transport registered in India, wherever they may be. Its jurisdiction will extend to all foreign persons residing in India and persons in Indian service, within and beyond the country.

All associates, branches or subsidiaries outside India of companies registered in India will also come under its ambit.

The draft apparently states that the Act will apply to trade, transfers, re-transfers, transit and trans-shipment of materials, equipment or technology (including software) of any description as identified by the government.

The bill defines in details WMDs, biological weapons, chemical weapons, munitions and devices, radioactive material, fissile material and delivery systems and indicates that the government may set-up a regulatory authority to implement rules and regulations under this Act.

It gives full powers to the Central government and protects the law enforcers of this Act from any counter-litigation, prosecution or any other legal proceedings. The draft prohibits any person other than government to deal with WMDs, bans any transfer of nuclear technology or radioactive material to terrorists. And imposes a ban on export of materials, equipment or technology relating to manufacture of biological, chemical or nuclear weapon.

The stringent law imposes heavy penalties on violators as deterrence. Any person found dealing with WMDs or radioactive material will be sentenced to a minimum of five years in jail to a maximum of life imprisonment.

Any person who is found with an intent to aid any terrorist or possesses a nuclear device can be punished for a minimum of five years to a maximum of life imprisonment with a hefty fine.

The proposed law also bars Indians from exhibiting, selling or supplying WMDs to any foreign national, who is a resident, operating, visiting or studying or conducting research within the territorial limits of the country including the EEZ and the airspace.

Any contravention of this rule will invite a minimum penalty of five lakh rupees. The second or every subsequent offence will be punishable with an imprisonment not less than six months but can be extended to five years. End text.

BLAKE